

requires that listing decisions be based solely on the best scientific and commercial information available. We have used the best available scientific information throughout our analysis, and have taken a number of steps—as required by the Act and its implementing regulations, the APA, and our peer review policy—to ensure that our analysis of the available information was balanced and objective. The evaluation of information contained within the final rule and all other related documents (e.g., the Status Review (Schliebe et al. 2006a) is a result of multiple levels of review and validation of information. We sought peer review and public comment, and incorporated all additional information received through these processes, where applicable. These steps were transparent and made available to the public for inspection, review, and comment. We have determined that the best available scientific and commercial information is sufficient to find that the polar bear meets the definition of a threatened species under the Act.

Comment 65: The Service did not comply with the Information Quality Act and with the Service's Information Quality Guidelines.

Our response: The Information Quality Act requires Federal agencies to ensure the quality, objectivity, utility, and integrity of the information they disseminate. "Utility" refers to the usefulness of the information to its intended users, and "integrity" pertains to the protection of the information from unauthorized access or revision. According to OMB guidelines (67 FR 8452), technical information that has been subjected to formal, independent, external peer review, as is performed by scientific journals, is presumed to be of acceptable objectivity. Literature used in the proposed rule was considered the best available peer-reviewed literature at the time. In addition, our proposed rule was peer-reviewed by 14 experts in the field of polar bear biology and climatology. In instances where information used in the proposed rule has become outdated, this final rule has been revised to reflect the most current scientific information. Despite being peer-reviewed, most scientific information has some limitations and statements of absolute certainty are not possible. In this rule, and in accordance with our responsibilities under the Act, we sought to provide a balanced analysis by considering all available information relevant to the status of polar bears and potential impacts of climate change and by acknowledging and considering the limitations of the information that provided the basis for

our analysis and decision-making (see "Summary of Factors Affecting the Polar Bear" and "Issue 5: Climate Change" for more information).

Comment 66: National Environmental Policy Act (NEPA) compliance is lacking, and an Environmental Impact Statement is needed as this is a significant Federal action.

Our response: The rule is exempt from NEPA procedures. In 1983, upon recommendation of the Council on Environmental Quality, the Service determined that NEPA documents are not required for regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). A listing rule provides the appropriate and necessary prohibitions and authorizations for a species that has been determined to be threatened under section 4(a) of the Act. The opportunity for public comments—one of the goals of NEPA—is also already provided through section 4 rulemaking procedures. This determination was upheld in *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (6th Cir. 1981).

Comment 67: The Service should fulfill its requirement to have regular and meaningful consultation and collaboration with Alaska Native organizations in the development of this Federal action.

Our response: As detailed in the preamble to this section of the final rule, we actively engaged in government-to-government consultation with Alaska Native Tribes in accordance with E.O. 13175 and Secretarial Order 3225. Since 1997, the Service has worked closely with the Alaska Nanuuq Commission (Commission) on polar bear management and conservation for subsistence purposes. Not only was the Commission kept fully informed throughout the development of the proposed rule, but that organization was asked to serve as a peer reviewer of the Status Review (Schliebe et al. 2006a) and the proposed rule (72 FR 1064). Following publication of the proposed rule, the Service actively solicited comments from Alaska Natives living within the range of the polar bear. We received comments on the proposed rule from seven tribal associations. We held a public hearing in Barrow, Alaska, to enable Alaska Natives to provide oral comment. We invited the 15 villages in the Commission to participate in the hearing, and we offered the opportunity to provide oral comment via teleconference. Thus, we believe we have fulfilled our requirement to have regular and meaningful consultation and collaboration with Alaska Native

organizations in the development of this final rule.

Comment 68: An Initial Regulatory Flexibility Analysis (IRFA) should be completed prior to the publication of a final rule.

Our response: Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), an IRFA is prepared in order to describe the effects of a rule on small entities (small businesses, small organizations, and small government jurisdictions). An IRFA is not prepared in a listing decision because we consider only the best available scientific information and do not consider economic impacts (please see response to Comment 70 for additional discussion).

Comment 69: Some commenters stated that the Service should designate critical habitat concurrent with this rulemaking; however, several other commenters disagreed.

Our response: Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. Accordingly, we are not able to forego the process of designating critical habitat when doing so is prudent and critical habitat is determinable. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Given the complexity and degree of uncertainty at this time as to which specific areas in Alaska might be essential to the conservation of the polar bear in the long-term under rapidly changing environmental conditions, we have determined that we will need additional time to conduct a thorough evaluation and peer review of a potential critical habitat designation. Thus, we are not publishing a proposed designation of critical habitat concurrently with this final listing rule, but we intend to publish a proposed designation in the very near future. Please see the "Critical Habitat" section below for further discussion.

Issue 9: Impacts of Listing

Comment 70: Several comments highlighted potential impacts of listing, such as economic consequences, additional regulatory burden, and conservation benefits. Other commenters noted that economic factors cannot be taken into consideration at this stage of the listing.